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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARLA WILKES, individually,

Plaintiff - Appellant,

v.

ELECTRONIC DATA SYSTEMS
CORPORATION, Electronic Data
Systems; METROPOLITAN LIFE
INSURANCE COMPANY, a foreign
corporation,

Defendants - Appellees.

No. 06-15852

D.C. No. CV-04-00341-JMR

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
John M. Roll, District Judge, Presiding

Submitted February 13, 2008**
San Francisco, California

Before: CANBY, THOMPSON, and M. SMITH, Circuit Judges.

Plaintiff Marla Wilkes appeals from the district court's grant of summary judgment in favor of defendants Electronic Data Systems ("EDS") and

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously finds this case suitable for decision without oral argument pursuant to Fed. R. App. P. 34(a)(2).

Metropolitan Life Insurance (“MetLife”) on her claims for breach of contract, breach of fiduciary duty, and insurance bad faith. We review a grant of summary judgment *de novo*. *Devereaux v. Abbey*, 263 F.3d 1070, 1074 (9th Cir. 2001). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Because the employment manual at issue “clearly and conspicuously tells . . . employees that the manual is not part of the employment contract,” it did not modify the at-will relationship by creating an implied contract for short-term disability benefits. *Leikvold v. Valley View Cmty. Hosp.*, 688 P.2d 170, 174 (Ariz. 1984), *superseded on other grounds by* Ariz. Rev. Stat. § 23-1501(2). Wilkes has no right to the disability benefits as compensation earned because the disability benefit, which EDS could rescind at any time, was not an “offer of pay that induced the performance” of the at-will services. *Demasse v. ITT Corp.*, 984 P.2d 1138, 1144 n.3 (Ariz. 1999). Accordingly, no contract to provide benefits was formed between Wilkes and EDS, and therefore her breach of contract claim against EDS must fail. Wilkes points to no breach of the administrative services agreement between EDS and MetLife that would support her claim as a third-party beneficiary of that contract, so that claim also fails.

Because no contract was formed modifying the at-will relationship, no contract of insurance was formed that would support a bad faith tort claim. *See*

Nelson v. Phoenix Resort Corp., 888 P.2d 1375, 1384-85 (Ariz. App. 1994)

(refusing to import the bad faith tort from the context of insurance contracts to the employment setting). Wilkes' claim for breach of fiduciary duty also lacks merit because, as an employer, EDS owed Wilkes no fiduciary duty, *Rhoads v. Harvey Publ'ns, Inc.*, 700 P.2d 840, 847-48 (Ariz. App. 1984), and no contract was formed giving rise to such a duty.

The judgment of the district court is **AFFIRMED**.